

# INDIAN AFFAIRS MANUAL

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Environmental Management

Chapter: 1

Policy, Requirements and Responsibilities

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**1.1 Purpose.** The purpose of this Chapter is to establish the basic policies, requirements and responsibilities that apply to environmental management for Indian Affairs. Environmental management includes environmental compliance (Chapter 2) and environmental analysis and review activities, including those required by the National Environmental Policy Act (NEPA) (Chapter 3).

**1.2 Policy.** It is the policy of Indian Affairs to:

- A. Comply** with applicable environmental management requirements;
- B. Integrate** environmental considerations into the initial stage of planning for all activities with a potential impact on the quality of the land, water, or air;
- C. Ensure** that all Indian Affairs work places and quarters are protective of the environment and the health of employees, students, and visitors;
- D. Seek** collaborative tribal participation in Indian Affairs environmental decision-making;
- E. Provide** advice and support to tribes and tribal organizations in complying with environmental statutes and regulations;
- F. Include** in environmental analyses the cultural values of the affected tribe and the relationship between the environment and culture; and
- G. Assist** other governmental agencies in their environmental management activities affecting Native Americans and tribal environments and resources.

**1.3 Requirements.** The following Executive Orders impose general requirements on Indian Affairs environmental management. Additional requirements are enumerated in Chapter 2 and Chapter 3.

- A. Executive Order 12898**, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, February 11, 1994; and
- B. Executive Order 13007**, Indian Sacred Sites, May 24, 1996.

**1.4 Tribal Environmental Laws.** Tribes may establish codes and set standards for regulating activities that affect tribal environments and resources either under federal statutes or under inherent tribal authority. In programs or activities affecting any reservation or Tribal resource, Indian Affairs will comply with all applicable tribal environmental, cultural, and natural resources codes or standards, unless compliance is prohibited by some other legal requirement or preempted by Federal law.

## **1.5 Responsibilities.**

### **A. All Indian Affairs Managers.**

(1) Ensure that all facilities and activities under their supervision comply with the environmental requirements, policy and guidance referenced in Sections 1.2, 1.3 and 1.4 of this Chapter; Sections 2.3 and 2.4 of Chapter 2 and Sections 3.3 and 3.4 of Chapter 3 of this Part; and other Departmental and Indian Affairs environmental management policies; and

(2) Ensure that appropriate Indian Affairs staff have environmental management training in line with their positions and in accordance with a curriculum developed by the Chief, Division of Environmental and Cultural Resources Management, Office of Trust Responsibilities.

**B. Director, Office of Trust Responsibilities.** Coordinates with Area Directors and other Office Directors to ensure that required environmental management activities occur.

**C. Chief, Division of Environmental and Cultural Resources Management, Office of Trust Responsibilities.**

(1) Prepares policy, guidance, and standards for Indian Affairs personnel on compliance with the environmental requirements referenced in Sections 1.3 and 1.4 of this Chapter; Sections 2.3 and 2.4 of Chapter 2 and Section 3.3 and 3.4 of Chapter 3 of this Part; and other Departmental or Indian Affairs environmental management policies;

(2) Develops curriculum for environmental management training and provides training to Indian Affairs managers and staff;

(3) Provides training, technical expertise and support to tribal governments for environmental management activities; and

(4) Serves as a liaison with other federal, state, local, and tribal governments regarding environmental management programs.

**D. Area Directors.** In consultation with the Director, Office of Trust Responsibilities:

(1) Select an Area Environmental Scientist to take the lead on and coordinate all environmental management activities for Indian Affairs facilities and operations within the Area; and

(2) Select a NEPA Coordinator to coordinate environmental analysis and review activities.

**E. Agency Superintendents.** Where necessary, and in consultation with the Area Director and the Environmental Scientist, select an Agency Environmental Specialist to coordinate day-to-day environmental management activities at the Agency.

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**2.1 Purpose.** This chapter establishes the specific requirements and responsibilities of Indian Affairs headquarters and field staff for compliance with environmental statutes and regulations.

**2.2 Scope.** This chapter addresses compliance with those laws that regulate the use, handling, and disposal of chemicals, waste, and other pollutants and those that impose environmental reporting requirements. This chapter also addresses responsibilities for the Indian Affairs environmental compliance auditing program required by Chapter 2 of Departmental Manual 515. This chapter does not cover compliance with environmental analysis and review statutes, such as the National Environmental Policy Act (NEPA), which are addressed in Chapter 3 of this Part.

**2.3 Requirements.** The following statutes, regulations promulgated under the statutes, and Executive Orders impose requirements on the Indian Affairs environmental compliance program.

## A. Statutes.

- (1) 7 U.S.C. §§ 136 - 136y, Federal Insecticide, Fungicide and Rodenticide Act;
- (2) 15 U.S.C. §§ 2601 - 2692, Toxic Substances Control Act;
- (3) 15 U.S.C. §§ 2641 et seq., Asbestos Hazard Emergency Response Act of 1986;
- (4) 16 U.S.C. §§ 1431 - 1434, Marine Protection, Research, and Sanctuaries Act of 1972, as amended;
- (5) 29 U.S.C. §§ 651 et seq., Occupational Safety and Health Act of 1970;
- (6) 33 U.S.C. §§ 1251 - 1387, Federal Water Pollution Control Act, as amended;
- (7) 33 U.S.C. §§ 2702 - 2761, Oil Pollution Act of 1990;
- (8) 42 U.S.C. §§ 300f et seq.; Safe Drinking Water Act of 1974 as amended;
- (9) 42 U.S.C. §§ 4901 - 4918, Noise Control Act of 1972;
- (10) 42 U.S.C. §§ 6901 - 6992, Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 (RCRA) and the Federal Facilities Compliance Act of 1992;
- (11) 42 U.S.C. §§ 7401 - 7671q, Clean Air Act, as amended;
- (12) 42 U.S.C. §§ 9601 - 9675, Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended;
- (13) 42 U.S.C. §§ 11011 et seq., Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA);
- (14) 42 U.S.C. §§ 13101 - 13109, Pollution Prevention Act of 1990; and

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(15) 49 U.S.C. §§1801 - 1812, Hazardous Materials Transportation Act.

### **B. Executive Orders.**

(1) Executive Order 13016, Amendment to Executive Order 12580, August 28, 1996;

(2) Executive Order 12873, Federal Acquisition, Recycling, and Waste Prevention, October 20, 1993;

(3) Executive Order 12856, Federal Compliance With Right-to-Know Laws and Pollution Prevention Requirements, August 3, 1993;

(4) Executive Order 12843, Procurement Requirements and Policies for Federal Agencies for Ozone-Depleting Substances, April 21, 1993;

(5) Executive Order 12780, Federal Agency Recycling and the Council on Federal Recycling and Procurement;

(6) Executive Order 12580, Superfund Implementation, January 23, 1987;

(7) Executive Order 12196, Occupational Safety and Health Programs for Federal Employees, February 26, 1980; and

(8) Executive Order 12088, Federal Compliance with Pollution Control Standards, October 13, 1978.

**2.4 Guidance.** The following guidance documents are available to assist Indian Affairs in complying with the requirements listed in Sections 1.3 and 1.4 of Chapter 1 of this Part and Section 2.3 of this Chapter. All guidance documents listed below are available from the Chief, Division of Environmental and Cultural Resources Management, MS 4513-MIB, 1849 C Street, NW, Washington, DC 20240.

**A. Departmental Manual, Part 515,** Environmental Management;

**B. Departmental Manual, Part 518,** Hazardous Waste Management;

**C. Guide for Developing P2 Strategies** for EO 12856 and Beyond;

**D. Guidance for Implementation of Executive Order 12856,** March 1995, Federal Compliance with Right-To-Know Laws and Pollution Prevention Requirements;

**E. Questions and Answers Part I For EO 12856** Section 3-304 Toxic Release Inventory Pollution Prevention Reporting as required by Section 313 of the Emergency Planning and Community Right-to-Know Act (EPCRA);

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**F. Questions and Answers Part II For EO 12856**, Section 3-305, and EPCRA Sections 301-312; and

**G. General Policy Interpretation on Environmental Auditing**, April 1998.

### 2.5 Responsibilities.

#### **A. All Indian Affairs Employees.**

(1) Immediately report any discovery of environmental contamination at any Indian Affairs facility and contamination resulting from any Indian Affairs operation to the Area Environmental Scientist; and

(2) Cooperate with the Chief, Division of Environmental and Cultural Resources Management, on the environmental compliance audit program of Indian Affairs facilities and operations.

#### **B. All Indian Affairs Managers.**

(1) Inform the Area Environmental Scientist of any communication received regarding non-compliance with environmental requirements at Indian Affairs facilities, or as a result of Indian Affairs activities, regardless of whether the communication is written or oral; a letter, a Notice of Violation, or a Complaint; and regardless of whether the communication is from a federal, state, or tribal agency or an individual; and

(2) Consult with the Chief, Division of Environmental and Cultural Resources Management, on the development and implementation of the Indian Affairs annual plan for the control of environmental pollution.

**C. Assistant Secretary - Indian Affairs.** Submits to the Director, Office of Management and Budget, through the Administrator, Environmental Protection Agency, Indian Affairs annual plan for the control of environmental pollution, as required by section 1-401 of Executive Order 12088.

#### **D. Chief, Division of Environmental and Cultural Resources Management, Office of Trust Responsibilities.**

(1) Prepares Indian Affairs annual plan and budget for the control of environmental pollution as required by Executive Order 12088. This will be done with the assistance of the Area Environmental Scientists and in consultation with the Area Directors, Central Office Directors, Agency Superintendents, Education Line Officers, other appropriate Indian Affairs personnel, and Tribes;

(2) Coordinates Indian Affairs environmental compliance, cleanup, and auditing program, including, but not limited to, the following:

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- (a) Asbestos Hazard Emergency Response Act (AHERA) compliance;
  - (b) Resource Conservation and Recovery Act (RCRA) compliance, including storage tank, solid waste, and hazardous waste requirements;
  - (c) Environmental emergency response and spill cleanup activities, and other Comprehensive Environmental Response Compensation and Liability Act (CERCLA) response actions;
  - (d) Occupational Safety and Health Administration (OSHA) hazard communications and chemical safety compliance;
  - (e) Polychlorinated biphenyl (PCB) compliance, including a PCB phase-out throughout Indian Affairs;
  - (f) Waste water compliance, where Indian Affairs is the owner or operator of a waste water system;
  - (g) Compliance with lead-based paint requirements;
  - (h) Compliance with National Pollution Discharge Elimination System monitoring, permitting and reporting requirements;
  - (i) Compliance with Safe Drinking Water Act monitoring and reporting where Indian Affairs is the owner or operator of a drinking water system; and
  - (j) An environmental auditing program for all Indian Affairs facilities and operations.
- (3) Develops and maintains a database of Indian Affairs environmental liabilities, audit results, and environmental compliance requirements; and
- (4) Takes the lead in negotiating settlements if Indian Affairs is subject to an enforcement action alleging non-compliance with the requirements referenced in Section 2.3 of this Chapter.

### **E. Director, Office of Indian Education Programs (OIEP).**

- (1) Ensures that the Education Line Officers coordinate with the Area Environmental Scientists on environmental compliance issues affecting schools;
- (2) Assists the Chief, Division of Environmental and Cultural Resources Management, in ensuring that grant schools and dormitories perform required environmental compliance or provide Indian Affairs access to the school to ensure compliance and ensures that appropriate language in this regard is included in the grants.

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**F. Education Line Officers.** Assist the Area Environmental Scientist to ensure that environmental compliance and remediation activities are carried out at schools and dormitories.

**G. Awarding Officials for Contract Schools.** Include language in contracts requiring contract schools and dormitories to perform environmental compliance activities.

**H. Director, Facilities Management and Construction Center (FMCC).**

(1) Ensures that each Indian Affairs facility constructed is designed to minimize the day-to-day environmental compliance burden. For example, to the extent feasible, buildings should be designed to avoid fuel storage tanks or to use aboveground, rather than underground, storage tanks; and building materials containing asbestos should not be used. To the extent feasible, Facilities Improvement and Repair (FI&R), Quarters Improvement and Repair (QI&R), and other FMCC funded projects should be designed and implemented to eliminate environmental compliance burdens;

(2) Informs the Chief, Division of Environmental and Cultural Resources Management, of any environmental components of each Indian Affairs facility that is constructed, such as aboveground storage tanks or wastewater facilities, so that the facility can be added to the environmental compliance database; and

(3) For each Indian Affairs facility that is renovated or demolished using FMCC funding, ensures that asbestos, lead-based paint, PCB's, other environmental contaminants, and any contamination resulting from them, is properly removed, cleaned up, and disposed.

(a) Consults with the appropriate Area Director, Area Environmental Scientist, and the Chief, Division of Environmental and Cultural Resources Management, to ensure that environmental compliance occurs; and

(b) Informs the Chief, Division of Environmental and Cultural Resources Management, when FMCC has cleaned up environmental contaminants during a renovation or demolition, so that the environmental database can be updated.

**I. Area Environmental Scientists.**

(1) Establish and implement the Indian Affairs environmental compliance program in the Area, including the programs listed in Section 2.5D(2) of this Chapter, in consultation with the Chief, Division of Environmental and Cultural Resources Management. Coordinate with appropriate Area, Agency, OIEP, and Tribal staff to ensure that the necessary environmental compliance work is performed;

(2) Provide guidance to Area and Agency Facilities Managers, Agency Superintendents, Education Line Officers, Agency Environmental Specialists, other Indian Affairs staff, and Tribes that must complete day-to-day environmental compliance projects;

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(3) Assist the Chief, Division of Environmental and Cultural Resources Management, in developing and implementing the annual plan and budget for the control of environmental pollution in the Area;

(4) Inform the Chief, Division of Environmental and Cultural Resources Management, of any communication received regarding non-compliance with environmental requirements at Indian Affairs facilities, or as a result of Indian Affairs activities;

(5) Maintain copies of all hazardous waste manifests, permits and required reports;

(6) Provide the Chief, Division of Environmental and Cultural Resources Management, with copies of all hazardous waste manifests generated in the Area; and

(7) Work with other federal agencies, especially the Environmental Protection Agency, to ensure that Indian Affairs is in compliance with environmental statutes.

### **J. Area Facilities Managers.**

(1) Assist the Area Environmental Scientist to ensure that environmental compliance and remediation activities are carried out in the Area; and

(2) Provide hazardous waste manifests, permits and required reports to the Area Environmental Scientist.

### **K. Agency Superintendents.**

(1) Provide the Area Environmental Scientist with a copy of the manifest, permits, and required reports for each shipment of hazardous waste or other substance that must be manifested (e.g. PCBs) from the Agency; and

(2) Cooperate with the Area Environmental Scientist and the Chief, Division of Environmental and Cultural Resources Management, to ensure that environmental compliance and remediation activities are carried out in the Agency.

**L. Agency Environmental Specialists.** Follow guidance provided by the Area Environmental Scientist and the Chief, Division of Environmental and Cultural Resources Management, to ensure that the day-to-day activities required to maintain environmental compliance at all Indian Affairs facilities and operations within the Agency jurisdiction are performed, including the programs listed in Section 2.5D(2) of this Chapter. The Agency Environmental Specialist can do the work, coordinate with the staff of other Agency operations (e.g. facilities, roads, etc.) to ensure the work is done, or contract to have the Tribe or other third party perform the work.



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Environmental Analysis and Review

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**3.1 Purpose.** This chapter establishes the basic requirements, guidance, and responsibilities for complying with the National Environmental Policy Act (NEPA) and other environmental analysis and review requirements.

**3.2 Scope.** NEPA requires that the environmental effects of any major federal action be evaluated prior to initiation of the action. Other statutes may impose similar requirements. Environmental analysis and review activities are also required before land can be taken into trust and before property is transferred from Indian Affairs to Tribes or other parties.

**3.3 Requirements.** The following statute, regulations, and executive orders impose requirements on Indian Affairs regarding compliance with NEPA and other environmental analysis and review programs:

**A. 42 U.S.C. §§ 4321 - 4347,** National Environmental Policy Act of 1969 (NEPA), as amended;

**B. 40 CFR Part 373,** Reporting Hazardous Substance Activities When Selling or Transferring Federal Real Property;

**C. 40 CFR Parts 1500 - 1508,** Regulations of the Council on Environmental Quality (CEQ);

**D. Other Environmental Review and Consultation Requirements.** Numerous statutes, in addition to NEPA, establish environmental review and consultation requirements (See the NEPA Handbook referenced in 3.4B of this Chapter for examples). The determination as to whether any of these requirements apply to a particular action proposed to be taken by Indian Affairs is independent from the determination as to whether NEPA requires the preparation of an Environmental Impact Statement (EIS). If any of these requirements apply to a particular proposed action for which an EIS is prepared under NEPA, the CEQ regulations require that these requirements be addressed in the draft EIS (40 CFR Part 1502.25);

**E. Executive Order 11514,** Protection and Enhancement of Environmental Quality, Section 2, March 5, 1970, as amended by Executive Order 11991, Relating to Protection and Enhancement of Environmental Quality, May 24, 1977; and

**F. Tribal Environmental Laws.** Whenever Indian Affairs proposes to take an action which would be regulated by any tribal environmental, cultural, or natural resource code or standard, an environmental assessment will be prepared (516 DM 2.3 A (3)(I)).

**3.4 Guidance.** The following guidance documents are available to assist Indian Affairs in complying with NEPA. All guidance documents listed below are available from the Chief, Division of Environmental and Cultural Resources Management, MS 4513-MIB, 1849 C Street, NW, Washington, DC 20240.

**A. Departmental Manual Part 516,** Environmental Quality;

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- B. Departmental Manual Part 602,** Land Acquisition, Exchange and Disposal;
- C. NEPA Handbook.** Provides guidance for Indian Affairs personnel in preparing documents required by NEPA;
- D. Environmental Justice Guidance Under the National Environmental Policy Act,** Council on Environmental Quality; and
- E. Guidance for Incorporating Environmental Justice Concerns in EPA's NEPA Compliance Analyses,** April 1998, Environmental Protection Agency.

## 3.5 Responsibilities.

- A. Assistant Secretary - Indian Affairs.** Reviews and acts on any NEPA documents, including Categorical Exclusions, Environmental Impact Statements, Environmental Assessments, or Findings of No Significant Impact that are raised to the Assistant Secretary level.
- B. Commissioner/Deputy Commissioner of Indian Affairs.** Reviews and acts on any NEPA documents, including Categorical Exclusions, Environmental Impact Statements, Environmental Assessments, or Findings of No Significant Impact that are raised to the Commissioner/Deputy Commissioner level.
- C. Director, Office of Trust Responsibilities.** Ensures the interdisciplinary capabilities of the Division of Environmental and Cultural Resources Management as required by Section 102(2)(A) of NEPA.
- D. Chief, Division of Environmental and Cultural Resources Management.** Coordinates Indian Affairs NEPA and other environmental analysis and review activities.
- E. Area Directors.**
  - (1) Ensure that all acquisitions of trust lands and transfers of trust lands to Tribes meet all environmental requirements; and
  - (2) Review and act on any NEPA documents, including Categorical Exclusions, Environmental Impact Statements, Environmental Assessments, and Findings of No Significant Impact that are not otherwise delegated to the Agency level.
- F. Area NEPA Coordinators or Area Environmental Scientists.**
  - (1) Coordinate NEPA and other environmental review and analysis activities in the Area;
  - (2) For any Indian Affairs action originated in the Area or requiring Area Director's approval for which NEPA analysis or other environmental analysis or review is required, take the

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lead for conducting the analysis, or ensuring that it is conducted, in accordance with the authorities and guidance referenced in Sections 3.3 and 3.4 of this Chapter; and

- (3) Review Environmental Assessments conducted at the Agency level; and
- (4) Inspect projects to ensure that all required mitigation measures are carried out.

**G. Agency Superintendents.** Review and act on any NEPA documents, including Categorical Exclusions, Environmental Impact Statements, Environmental Assessments, and Findings of No Significant Impact that are delegated to the Agency level.

**H. Agency Environmental Specialists.** For any action which has been delegated to the Agency level, and for which NEPA analysis or other environmental analysis or review is required, take the lead in conducting the analysis, or ensuring that it is conducted, in accordance with the requirements and guidance referenced in Sections 3.3 and 3.4 of this Chapter.